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736. Though it may be contended that this interpretation creates a new contract for the parties, yet courts have acted similarly in the somewhat analogous cases of equitable servitudes. See 29 HARV. L. REV. 106. Again, the decisions may also be supported on the ground that, though the contracts are such as might become opposed to public interest, the contingency thereof is too slight to make them void at law. But even if the law considers such contracts valid, certainly equity will refuse to grant specific performance after they have become opposed to the public interest. *Conger v. New York, West Shore, etc. Ry. Co.*, 120 N. Y. 29. The conditional decree in the principal case was framed to anticipate such a situation.

HUSBAND AND WIFE — RIGHTS AND LIABILITIES OF WIFE — CONTRACTS BY WIFE TO CONVEY HER REALTY. — A statute permitted a wife to contract and deal so as to affect her real and personal property in the same manner and with the same effect as if she were unmarried, but made any conveyance of her realty, without the written consent of her husband, and her privy examination as to her willingness to convey, invalid. 1911 N. C. PUBLIC LAWS, ch. 109. The plaintiff contracted with the defendant husband and wife for a conveyance of the wife's realty, but no privy examination was taken. On the wife's refusal to convey, the plaintiff sues to recover damages for breach of the contract. *Held*, that he may recover. *Warren v. Dail*, 87 S. E. 126 (N. C.).

Effect must be given, if possible, to every word, clause, and sentence of a statute. See *Petri v. Commercial, etc. Bank*, 142 U. S. 644, 650. See 2 SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed., § 380. Therefore the statute must be so construed as to distinguish between the right to contract and the right to convey. Specific performance of the contract will not be decreed, as this would involve the transformation of the contract into a conveyance, which is contrary to the distinction made by the statute. *Cf. Martin v. Mitchell*, 2 J. & W. 413, 425. But a suit for damages does not involve this difficulty. It is clear that, where a husband is unable to procure a release of dower, he is, nevertheless, liable for the breach of his contract to convey. *Drake v. Baker*, 34 N. J. L. 358. By similar reasoning, the wife should be liable on her contract to convey. Nor is such liability contrary to the spirit of the statute, for the purpose of the act is not to protect the wife from unfortunate contracts, but to prevent the loss of her realty. And such liability adds no extra burden to her land since it is subject to levies to satisfy judgments for breaches of her other contracts. See *Royal v. Southerland*, 168 N. C. 405, 406, 84 S. E. 708, 709. Under a similar statute such contracts have been held binding. *Brown v. Dressler*, 125 Mo. 589, 29 S. W. 13; *Davis v. Watson*, 89 Mo. App. 15, 29.

INSURANCE — MARINE INSURANCE — VALUED POLICY — EXTENT OF INSURER'S RIGHT OF SUBROGATION. — The plaintiffs insured the defendant's ship, the *Helvetia*, for the full value, which in the policy was stated to be £45,000. The *Helvetia* collided with the *Empress of Britain* and was totally lost. The insurers paid for a total loss in accordance with value stated in the policy. Subsequently in an admiralty action both ships were held to blame, the *Helvetia* for $\frac{7}{12}$ of the damage and the *Empress of Britain* for $\frac{5}{12}$, and the owners of the latter paid the defendants £26,900— $\frac{5}{12}$ of £65,000—which the court found to be the value of the lost vessel. The insurers now demand this sum from the defendants. *Held*, that the insurers are entitled to the full amount recovered from the tortfeasors. *Thames and Mersey Marine Ins. Co. v. British and Chilean Steamship Co.*, 32 T. L. Rep. 89, [1916] 1 K. B. 30.

If the insured sues the tortfeasor after he has been indemnified, and recovers, he must hold whatever amount the insurer is entitled to in trust for him. *Gales v. Hailman*, 11 Pa. St. 515; *Randal v. Cockran*, 1 Ves. Sen. 97. How-

ever, the theory upon which the recovery of the insurer is to be rested and consequently, the extent to which it should go, are disputed. An earlier English case stated that the insurer was entitled to everything recovered from the tortfeasor, on the ground that the insurer acquired the right against the tortfeasor through an abandonment. See *North of England Ins. Co. v. Armstrong*, 5 Q. B. 244, 248; *Burnand v. Rodocanachi*, 7 App. Cas. 333, 342. But it is to-day conceded on all sides that the right against a tortfeasor is not an incident of property, and therefore does not pass by a subsequent abandonment of the property. *The Livingstone*, 130 Fed. 746; *The St. Johns*, 101 Fed. 469, 472. See *Simpson v. Thomson*, 3 App. Cas. 279, 292. See 18 HARV. L. REV. 384. A better view would seem to be that the right rests on subrogation invoked to prevent the assured from recovering more than a full indemnity. See *Preston v. Castellane*, 11 Q. B. D. 380, 386; *Liverpool, etc. Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 462. Under this view the insurance company becomes entitled to anything coming into the hands of the insured which reduces the loss indemnified. Still, the insurer clearly should not recover more than he has paid. *The Livingstone*, *supra*. See *The St. Johns*, *supra*, 475; 2 ARNOULD, MARINE INSURANCE, 9 ed., § 1229. See *contra*, *Railway Co. v. Jurey*, 111 U. S. 584, 594; *North, etc. Ins. Co. v. Armstrong*, *supra*, 249. And the reason underlying the subrogation would require that the insurer's right should not begin until the insured had made up his full loss. *Contra*, *The St. Johns*, *supra*; *cf. The Livingstone*, *supra*, 749. It is submitted that a "valued" policy of the type in the principal case should effect no change in this result: in such a policy the whole vessel is insured, the clause stating the agreed value being inserted only in order to save the expense and doubt that may attend a later investigation of value in case of loss. In this respect it resembles an agreement for liquidated damages, and is to be sharply distinguished from insurance of a certain amount taken on a vessel. An inquiry as to the actual value of the vessel for the purpose of reducing the recovery or of averaging the loss is, of course, not permitted. *Insurance Co. v. Hodgson*, 6 Cranch (U. S.) 206, 221; *Providence, etc. Co. v. Phoenix Ins. Co.*, 89 N. Y. 559; *Irving v. Manning*, 1 H. of L. Cases, 287. *Contra*, *Clark v. United, etc. Co.*, 7 Mass. 365. But the valuation is not binding for every purpose in which the value is brought into question. See *Burnand v. Rodocanachi*, *supra*, 335, 342; *Irving v. Manning*, *supra*, 305. Since in subrogation we must first see the insured made whole, and since actual value has been made the basis of recovery from the tortfeasor, that value and not the agreed value should be the basis of distributing the fund recovered. For this neither violates the contract nor protects the insured in any wrong. In the principal case, therefore, the plaintiff should have recovered only £6,900. The result reached, however, may be correct under § 79 (1) of the English Marine Ins. Act of 1906.

INSURANCE — MERGER OF PRELIMINARY AGREEMENT IN POLICY — PAROL EVIDENCE RULE. — The plaintiff's agent entered into a contract of insurance with the defendant company on terms not in accord with his principal's instructions. Before a policy was issued the property was destroyed. Subsequently the agent, not having been informed of the loss, though it was known to the plaintiff, induced the defendant to issue a policy on new terms that accorded with the latter's instructions. This policy was dated to take effect from the time of the original agreement. The defendant company sought to restrict recovery to the terms of the initial agreement, but the trial court disallowed evidence of this transaction on the ground that the policy contained the contract between the parties. *Held*, that the exclusion was proper. *El Dia Ins. Co. v. Sinclair*, C. C. A., 2d Circ. (not yet reported).

Since the agent was acting within the scope of his authority his failure to follow the plaintiff's instructions in the original transaction did not prevent a